

**FILED**

**DEC 01 2017**

Clerk, U.S. District Court  
District Of Montana  
Helena

**IN THE UNITED STATES DISTRICT COURT**

**FOR THE DISTRICT OF MONTANA**

**HELENA DIVISION**

WEH Magic Valley Holdings, LLC, a  
limited liability corporation,

Plaintiff,

vs.

EIH Parent, LLC, a limited liability  
company and James Carkulis, an  
individual,

Defendants.

No. CV-15-50-H-SEH

**ORDER**

At hearing on January 18, 2017, the parties were directed to: “(1) brief certain specific issues outlined by the Court [on January 18, 2017]; (2) stipulate to the content and file the complete text of the Purchase and Sale Agreement (“PSA”) [of August 1, 2014]; and (3) for the Court to be notified if the parties did not fully agree upon the content of the PSA to be filed.”<sup>1</sup>

---

<sup>1</sup> Doc. 132 at 2.

“Additional motions filed after the January 18, 2017, hearing were: (1) Plaintiff’s Notice of Dispute Re: Full Contents of Contract and Motion for Judicial Determination;<sup>2</sup> and (2) Plaintiff’s Motion *in Limine* to Exclude Expert Testimony of James Carkulis,”<sup>3</sup> both of which were filed by Kimberly Beatty, Esq. “Three briefs directed to related issues were also filed,”<sup>4</sup> two of which were submitted by Ms. Beatty.<sup>5</sup>

On June 7, 2017, the Court issued its Memorandum which addressed in detail: 1) the contentions of the parties; 2) the parties’ written contract of August 1, 2014; and 3) the unresolved “Data Room” issue.<sup>6</sup> After the June 7, 2017, Memorandum was entered, the Court vacated an existing pretrial order deadline and established a briefing scheduling for any remaining claims, which included allowing each party the option to refile motions for summary judgment. On

---

<sup>2</sup> Doc. 116.

<sup>3</sup> Doc. 121.

<sup>4</sup> Doc. 120, Plaintiff’s Opening Brief in Response to Court’s Identification of Additional Issues and Request for Briefing; Doc. 123, Defendants’ Response to Plaintiff’s Opening Brief Regarding Additional Issues; Doc. 128, Plaintiff’s Brief in Response to Court’s Requests Regarding Principle Issues.

<sup>5</sup> Doc. 132 at 3. Since the January 18, 2017, hearing, Beatty has authored and filed 28 separate filings. Benak has filed none.

<sup>6</sup> Doc. 132.

September 22, 2017, Defendants filed a renewed motion for summary judgment<sup>7</sup> on Counts II through V of the Second Amended Complaint.<sup>8</sup>

By Order of November 29, 2017, the Court set hearing for December 5, 2017, at 1:00 p.m. on:

(1) Defendants' Renewed Motion for Summary Judgment on Counts II through V of Plaintiff's Second Amended Complaint [Opposed];<sup>9</sup> (2) unresolved issues in Count I (Breach of Contract Against EIH and Carkulis); (3) waiver or limitation on claims for recovery of consequential damages under Section 9.12 of the Purchase and Sale Agreement; (4) a proposed schedule for the preparation and submission of a final pretrial order prepared in compliance with Fed. R. Civ. P. 26(a)(3)(A) and L.R. 16.4 and the Orders of this Court; (5) time reasonably required and to be requested by counsel to prepare and submit the final pretrial order; (6) time reasonably required and to be requested by counsel and allowed by the Court to address and decide issues that may remain for pretrial resolution after the proposed pretrial order is filed; and (7) to consider any such and further pretrial issues as may be presented to the Court.<sup>10</sup>

On November 30, 2017, Ms. Beatty filed an Unopposed Motion and Brief in Support to Vacate and Reset Status Conference<sup>11</sup> that requested on behalf of *pro hac vice* James D. Benak, Esq. that the hearing scheduled for December 5, 2017,

---

<sup>7</sup> Doc. 164.

<sup>8</sup> Counts II, III, and V are against Carkulis only, Count IV (negligent misrepresentation) is asserted against EIH and Carkulis.

<sup>9</sup> Doc. 164.

<sup>10</sup> Doc. 171 at 1-2.p

<sup>11</sup> Doc. 172.

be vacated.

Mr. Benak has appeared, with leave of Court, as *pro hac vice* in this case.

The Court's Order admitting Mr. Benak recites, *inter alia*:

Mr. Benak must do his own work. He must do his own writing, sign his own pleadings, motions, briefs and other documents served or filed by him, and, if designated co-lead counsel, must appear and participate personally in all proceedings before the Court.<sup>12</sup>

As noted, the current motion for continuance was not filed by Mr. Benak but by Ms. Beatty.

The Court is satisfied that Ms. Beatty is capable of representing WEH's interests before this Court and will do so. If Mr. Benak is unable to attend the hearing set for December 5, 2017, his presence at the hearing in this instance will be excused.

The hearing set for December 5, 2017, will proceed as scheduled.

ORDERED:

The Unopposed Motion to Vacate and Reset Status Conference<sup>13</sup> is


---

<sup>12</sup> Doc. 7 at 2.

<sup>13</sup> Doc. 172.

DENIED.

DATED this 1<sup>st</sup> day of December, 2017.

  
\_\_\_\_\_  
SAM E. HADDON  
United States District Judge